

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Mpower
Communications Corp. U-5859-C for Approval of
a Transaction Pursuant to Pub. Util. Code § 854.

Application 02-04-014
(Filed April 12, 2002)

O P I N I O N**1. Summary**

This application seeks approval under § 854(a) of the Pub. Util. Code for the indirect transfer of control of Mpower Communications Corp. (Applicant or Mpower), by its parent, Mpower Holding Corporation (Mpower Holding), from the existing shareholders of Mpower Holding to new shareholders of Mpower Holding pursuant to an action initiated by Mpower Holding under Chapter 11 of the United States Bankruptcy Code. The application is granted.

2. Description of Applicant(s)

Mpower is a privately held Nevada corporation with its principal place of business in Pittsford, NY. It was granted a certificate of public convenience and necessity (CPCN) as MGC Communications, Inc. on September 24, 1997 by D.97-09-011.¹ Applicant is authorized to provide resale interexchange and local exchange telecommunications services in California. As of March 22, 2002,

¹ Applicant notified the Commission of the change of its corporate name from MGC Communications, Inc. to Mpower Communications Corp. in Advice Letter No. 76 filed on September 12, 2000.

Mpower was operating in 11 markets in California, focusing on small and mid-sized business customers. Pursuant to Rule 36(a) of the Commission's Rules of Practice and Procedure, Mpower submitted a recent balance sheet and income statement as Exhibit 1. Applicant states that due to the sensitive nature of the financial information set forth in Exhibit 1, it filed a motion for leave to file Exhibit 1 under seal.

Mpower Holding is a publicly traded Delaware corporation which also has its principal place of business in Pittsford, NY. Mpower Holding does not provide telecommunications services in any jurisdiction and holds no regulatory licenses from any other state or federal regulatory commission.

3. Description of Transaction

A. Chapter 11 Filing

On April 8, 2002, Mpower Holding filed a petition under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ *et seq.* (Chapter 11 Filing), in the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court). In its Chapter 11 Filing, Mpower Holding submitted a plan of reorganization (Plan of Reorganization) under which it proposes to exchange newly issued shares of common stock for certain outstanding senior notes and all outstanding preferred stock issued by Mpower Holding. That Plan of Reorganization is Exhibit 2 to this application.

Specifically, under the Plan of Reorganization, Mpower Holding will issue (i) 55,250,000 new shares of common stock to certain shareholders (Noteholders) in exchange for senior secured notes issued by Mpower Holding and held by the Noteholders, and (ii) 8,775,000 new shares of common stock to certain preferred stockholders (Preferred Stockholders) in exchange for non-voting preferred stock

issued by Mpower Holding and held by the Preferred Stockholders (Noteholders and Preferred Stockholders, collectively, the “New Shareholders”).

The Mpower Holding common stock existing prior to the proposed transaction will be subject to a reverse stock split and will dilute to approximately 1.5% of the issued common stock of reorganized Mpower Holding. As a result of these proposed transactions, the New Shareholders will receive approximately 98.5% of the issued common stock of the reorganized Mpower Holding. There will be no outstanding preferred stock in Mpower Holding post-transaction. Applicant will continue to be wholly owned by Mpower Holding.

B. Necessity of This Application

Applicant is wholly owned by Mpower Holding and there will be new interests in Mpower Holding totaling approximately 98.5% of the outstanding shares. Therefore, Applicant seeks authorization from this Commission, to the extent necessary, under Pub. Util. Code § 854(a) for an indirect transfer of control of Applicant resulting from the reorganization to be ordered by the Bankruptcy Court and as generally described in Exhibit 2 to this application.

In fact, Applicant requests a general authorization to execute whatever reorganization is ultimately ordered by the Bankruptcy Court. To the extent the Bankruptcy Court modifies the described transaction, Applicant seeks approval to execute this transaction without having to submit a revised application to the Commission. Applicant requests expedited approval of this application in order to comply with the final order of the Bankruptcy Court as expeditiously as possible when issued.

Applicant will continue to provide telecommunications services as previously authorized by this Commission and will retain its certificate of public

convenience and necessity (CPCN). Thus, the proposed transaction does not involve a transfer of the Applicants' CPCN, nor does it involve a modification to the name under which Mpower operates or to the rates or terms and conditions of service to its California customers. The transaction will be transparent to its customers.

Applicant notes that as a result of the reorganization, Mpower Holding will reduce its debt from approximately \$425 million to approximately \$50 million. Mpower Holding seeks to reduce its debt in order to place itself in a better position to seek future financing which, in turn, will allow Mpower to continue operations into 2003 and beyond.

4. Public Interest

Applicant states that the proposed transaction will allow Applicant to enhance its competitive position by providing Mpower Holding with greater flexibility in obtaining financing which will yield benefits for Mpower and allow Mpower to continue operations into 2003 and beyond. Applicant goes on to say that the proposed transaction is not detrimental to the public interest because it does not involve any change in the management or officers of Mpower; does not in any way modify Mpower's operations or change the telecommunications services to be provided to its customers. Mpower will continue to operate pursuant to its existing CPCN and filed tariffs. It will not result in decrease in currently available services or an increase in rates charged to its California customers.

5. Discussion

Pub. Util. Code §§ 851-854 require Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state...." The purpose of these sections is to enable the

Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of control as a result of a Chapter 11 bankruptcy reorganization promises greater flexibility in future financing with a reduction in Mpower Holding's debt reduced from \$425 million to \$50 million. There will be no change in the operations of Mpower, nor in rate and charges for telecommunications services to Mpower customers.

There are no protests to this application. We authorize applicant's request, subject to the Bankruptcy Court ordering the proposed reorganization. We do not, however, authorize a blanket request as proposed by applicant should the Bankruptcy Court modify the proposed transaction. Applicant will need to file a new application or a petition to modify this decision should the Bankruptcy Court modify Mpower Holding's plan of reorganization.

7. Categorization

In Resolution ALJ 176-3086 dated April 22, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3086.

8. Request for Confidentiality

Applicants request that financial information pertaining to Mpower Holding income statement and balance sheet, Exhibit 1 filed with this application be kept under seal. Applicants represent that the information is proprietary and sensitive. The information, if revealed, would place Applicants at an unfair

business disadvantage. We have granted similar requests in the past and will do so here.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Notice of this application appeared in the Commission's Calendar of April 17, 2002.
2. No protests have been filed.
3. Applicant seeks approval pursuant to Pub. Util. Code § 854 for the indirect change in control from the existing shareholders of Mpower Holding to the new shareholders of Mpower Holding.
4. The reorganization involves no change to the name under which the Applicant will offer service in California nor will it result in any change to the rates or other terms and conditions of service.
5. Mpower is a local and interexchange telecommunications provider.
6. On April 8, 2002, Mpower Holding, Mpower's parent, filed a plan of reorganization under Chapter 11 of the United States Bankruptcy Code.
7. The Bankruptcy Court has not ruled on Mpower Holding's petition at this time.
8. Customers of Mpower will benefit from the proposed transaction, as this will allow applicant to enhance its competitive position with greater flexibility in obtaining financing.

9. Public disclosure of financial information pertaining to Mpower Holding's income statement and balance sheet, included in this application, would place Mpower Holding at an unfair business disadvantage.

Conclusions of Law

1. The proposed indirect transfer of control is in the public interest.
2. This proceeding is designated as a ratesetting proceeding; no protests have been received; no hearing is necessary.
3. Applicant's request to file its financial information under seal should be granted for 2 years.
4. If the Bankruptcy Court modifies Applicant's parent's proposed plan of reorganization, applicant should petition to modify the order or file another application.

O R D E R

IT IS ORDERED that:

1. Mpower Holding's proposed plan of reorganization is approved.
2. If the United States Bankruptcy Court modifies the proposed plan of reorganization, applicant shall seek this Commission approval either by a petition to modify this decision or a new application.
3. Applicant's request that the financial information pertaining to Mpower Holding's income statement and balance sheet, filed with this application, be kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order of the

Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

4. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

5. Application 02-04-014 is closed.

This order is effective today.

Dated _____, at San Francisco, California.